# RECENT IMPORTANT DECISIONS

ASSIGNMENTS—ASSIGNMENT OF AN EXPECTANCY.—Joseph and James were two of six children. A contract witnessed "that Joseph Snyder has sold to James Snyder one undivided sixth of the real estate owned by the mother, Susan Snyder; to secure said interest to James after her death, the mother unites in the conveyance of said interest. The said Joseph warrants and defends the interest from all claims." The contract was signed by Joseph and by the mother. *Held,* Joseph had no estate which he could convey, and the contract, though made with the consent of the mother, was unenforceable either in law or in equity as against him. But the contract, though joined in by Joseph, who had no interest, was effective as a conveyance to James by the mother of a one-sixth interest of her estate in remainder. Joseph should be allowed to share equally with the others in the remaining five-sixths of the estate, after deducting the consideration money paid to him, which should be considered as an advancement." *Snyder* v. *Snyder* (Ky., 1921), 235 S. W. 743.

At common law, "if a son bargain and sell the inheritance of his father, this is void, because he hath no right in himself." Co. Litt. 265. The more general rule in equity is that the transaction will be enforced against the heir as a contract to convey as soon as the title of the heir becomes absolute, if the contract is supported by a fair consideration. *Whelen* v. *Phillips,* 151 Pa. 312; *Crum* v. *Sawyer,* 132 Ill. 443; *Pierce* v. *Robinson,* 13 Cal. 123. Several jurisdictions hold that equity will not enforce the transaction unless it be entered into with the assent of the parent. The reason given is that it is a fraud on the parent who, if he had known that his property was going to a stranger, might have disposed of it in some other way. *McClure* v. *Raben,* 133 Ind. 507; *Boynton* v. *Hubbard,* 7 Mass. 112; *Alves* v. *Schlesinger,* 81 Ky. 291. Equity may give effect to the transaction if based merely upon a quit-claim deed. *Clendening* v. *Wyatt,* 54 Kans. 523. If the deed is a warranty deed, a much stronger case is presented and the heir is estopped, as against his grantee, to claim the interest which he subsequently acquires. *Bank* v. *Mersereau,* 3 Barb. Ch. 528; *Steele* v. *Frierson,* 85 Tenn. 430. The principal case, where the contract was based on a fair consideration, assented to by the parent, and warranted by the expectant heir, is as strong a case as there could be for giving effect to the intended transfer by Joseph to James; yet the majority of the court held that, as between them, nothing passed. A well-reasoned dissenting opinion argues that the transaction should be considered as a conveyance by the mother of a one-sixth interest in her estate to Joseph and a conveyance of this by him to James, thus giving effect to the intention of the parties and doing justice to the other four children with whom Joseph is allowed to share under the majority opinion. Would it not be still better for Kentucky to go one step

farther than the principle contended for in the dissenting opinion, and adopt the more general equity rule, directly giving effect to the contract for the transfer of an expectancy, so long as it has been entered into fairly?

CARRIERS—BAGGAGE—UNNECESSARY FOR PASSENGER TO TRAVEL ON TICKET. —P purchased a ticket for passage on D's railroad from Addyston to Cincinnati. From the latter place she could take D's through train, which did not stop at Addyston, to her destination in Michigan. She checked her trunk in the evening, intending herself to follow the next morning. It being more convenient, however, to take an interurban to Cincinnati, she did this and destroyed the ticket for passage on D's road. At Cincinnati she bought a ticket over D's road to Michigan. On arrival at her destination it was discovered that her trunk had been stolen from D's station at Addyston on the preceding evening. In a suit by P it was *held*, that when she purchased the ticket over D's road and checked her trunk the relation was in effect that of passenger and carrier, and D was liable as an insurer for the subsequent loss, though P did not travel on her ticket. *Caine* v. *Cleveland, C., C. & St. L. Ry. Co.* (Mich., 1921), 185 N. W. 765.

The rule upheld by the earlier cases on this subject seems to have been that the passenger must accompany his baggage. *The Elvira Harbeck*, 2 Blatchf. 336; *Graffam* v. *Boston & Maine R. Co.*, 67 Me. 234; 3 HUTCHINSON, CARRIERS (Ed. 3), § 1275. "Baggage implies a passenger who intends to go upon the train with his baggage." *Marshall* v. *Pontiac, O. & N. R. Co.*, 126 Mich. 45, 55 L. R. A. 650. In that case one purchased a ticket for the sole purpose of checking his baggage, later selling the ticket, and it was held that the railroad was only liable as a gratuitous bailee. The holding was not free from criticism, and though approved and followed by some courts—*Perry* v. *Seaboard Air Line Ry. Co.*, 171 N. C. 158; *Carlisle* v. *Grand Trunk R. W. Co.*, 25 Ont. L. Rep. 372; *Wood* v. *M. C. R. R. Co.*, 98 Me. 98—it was disapproved and repudiated by others—*McKibbin* v. *Wisconsin C. R. Co.*, 100 Minn. 270; *Alabama Gt. Southern R. Co.* v. *Knox*, 184 Ala. 485, 12 MICH. L. REV. 409. See also *Larned* v. *Central R. Co.*, 81 N. J. L. 571, 9 MICH. L. REV. 707. In the principal case the question arose for the first time in Michigan since the decision of the *Marshall* case twenty years before. Four justices undertook to distinguish the cases on the ground that in the *Marshall* case the loss occurred at the destination, the plaintiff not being there to receive the baggage, while in the principal case the loss at the point where the trunk was accepted, the plaintiff being ready at the destination to receive it; and on the further ground that in the *Marshall* case the plaintiff intended to deceive the railroad as to his riding on its train, while here there was no evidence of deception. Four justices considered the *Marshall* case as squarely overruled. The cases might have been further distinguished on the ground that in the *Marshall* case the plaintiff had sold his ticket and was having his baggage carried without cost to himself, while here the plaintiff destroyed her ticket and was fully paying the railroad for its service in transporting her baggage. Under